But when it appears that testator intended his bounty to be absolute and merely postponed the time of payment the gift is vested. *Furness* v. *Fox,* 1 Cush. 134, *Goodtitle* v. *Whitby,* 1 Burr. 228. Comparatively slight circumstances have been held sufficient to show an intention that the legatee is to take a vested interest and that a condition precedent to the vesting was not intended by the testator. In *Booth* v. *Booth,* 4 Ves. Jr. 399, the fact that the gift was of a residue of an estate was held to be a distinguishing feature and to indicate an intention that the gift should vest. *Love* v. *L'Estrange,* 5 Bro. P. C. 59. The severance of the legacy from the remainder of the estate by placing it in trust is a strong indication that the testator desired to give the entire beneficial interest. *Greet* v. *Greet,* 5 Beav. 123. A gift of the proceeds or interest in the meantime vests the legacy, *Leake* v. *Robinson,* 2 Mer. 365. But there must be a gift of the whole interest; a provision for maintenance is not of itself sufficient, *Roden* v. *Smith,* Ambl. 588, unless it includes all the interest for it is "the giving the interest" and "not the giving the maintenance" that vests the legacy. *Watson* v. *Hayes,* 5 My. & Cr. 125, 133; *Hoath* v. *Hoath,* 2 Bro. C. C. 3. An authority conferred upon the trustees to use their discretion in appropriating all or a part of the income to the use of the beneficiaries was held not to affect this principle but that the legacy vested. *Fox* v. *Fox,* L. R. 19 Eq. 286. A direction to accumulate the interest and dividends and then to pay at the age of twenty-five vests the legacy. *Saunders* v. *Vautier,* 4 Beav. 115. The court in the absence of any cases directly in point decided that the direction to accumulate the income for the benefit of the legatee and to sever the property from the rest of the estate indicated an intention on the part of the testator that the legacy should vest and rebutted the presumption arising from the use of the word "when" that the gift was contingent.

WITNESSES—ADMISSIBILITY OF PARENTS' TESTIMONY TO PROVE ILLEGITIMACY OF THEIR CHILD.—This was an action by a husband against a wife for annulment of the marriage, the defendant cross-claiming for the support of the child. Petitioner, replying to the cross-petition argued that he was not obligated for the support of the child as he was not its father, and he offered himself as a witness to prove that fact. His testimony was excluded by the trial court. *Held,* a putative father is incompetent to testify that a child born to the mother after marriage, though conceived before is not his child. *Palmer* v. *Palmer* (N. J. Eq. 1912) 82 Atl. 358.

This is the first time that the question has arisen for decision in the forum although the point was once mentioned in *Wallace* v. *Wallace,* 73 N. J. Eq. 403. The rule has had a peculiar history. At the early common law there was no rule at all against using the testimony of a husband or a wife to prove the non-access of the husband as evidence that some other than the husband was the father of the child. *St. Andrews* v. *St. Brides,* 1 Sessions Cas. K. B. 117; *Pendrell* v. *Pendrell,* 2 Stra. 925; *R.* v. *St. Peter,* Bull. N. P. 112. Then, beginning with the case of *The King and Reading* (1734) Lee temp. Hardwicke, 79, it was held that in filiation proceedings, the testimony of the wife alone cannot be received as evidence of the non-access of

her husband; but after non-access is otherwise proved, her testimony will *ex necessitate* be received as to the putative father. *The King and Bedel,* Lee temp. Hardwicke, 379, *R.* v. *Book,* 1 Wils. 340; *R.* v. *Luffe* (1807),8 East. 191. These cases did not hold that parents were incompetent to testify to the illegitimacy of their children, however. *R.* v. *Bramley,* 6 T. R. 330, 6 Durn. & E. 170. But in the chancery court, Lord MANSFIELD, in the case of *Goodright* v. *Moss* (1777) 2 Cowp. 591, laid it down as a rule founded in decency, morality, and policy that the parents of a child should not be permitted to say that they have had no connection, to prove illegitimacy of issue, and this decision was followed in *R.* v. *Kea* (1809) 11 East. 132, where it was held that a woman was incompetent to testify to non-access in a filiation case, and an order founded partly upon her testimony was quashed. From this decision it was an easy step to the exclusion of the testimony of both parents in such cases. *Cope* v. *Cope,* 1 Moo. & R. 269; *Wright* v. *Holdgate,* 3 C. & K. 158; *Anon.* v. *Anon., 22* Beav. 481, *23* Beav. 273. A reconsideration of the question, as a result of the statutory abolition of married persons' incompetency, (32 & 33 VICT. c. 68, 1869) caused a readoption of the old rule laid down in *The King and Reading* (*supra*), that the testimony was not incompetent, but insufficient if uncorroborated. *Rideout's Trusts* (1870) L. R. 10 Eq. 40; *Yearwood's Trusts,* L. R. 5 Ch. Div. 545 (1877). The House of Lords in 1885 in the *Aylesford Peerage case,* 11 A. C. 1, held that the declarations of the mother as to the illegitimacy of her child were admissible as evidence of her conduct, although she could not be allowed to make any such statements in the witness box. And finally, in *The Poulett Peerage* [1903] A. C. 395; *Anon.* v. *Anon.* (*supra*), was expressly overruled, the question was put upon the level of all other questions of fact, and the question of illegitimacy was made open to proof by testimony of the father and the mother, as well as that of other witnesses. In the United States, the doctrine of *The King and Reading* was early followed. *Com.* v. *Shepherd,* 6 Binn. 283; *Com.* v. *Wentz,* 1 Ashm. 269; *Parker* v. *Way,* 15 N. H. 45. Then, Lord MANSFIELD's doctrine, and the doctrine of the principal case was almost universally adopted. *Mill's Estate,* 137 Cal. 298; *Abington* v. *Duxbury,* 105 Mass. 287; *Egbert* v. *Greenwalt,* 44 Mich. 245; *Rabeke* v. *Baer,* 115 Mich. 328; *Chamberlain* v. *People,* 23 N. Y. 85; *Tioga* v. *South Creek,* 75 Pa. 433; *Mink* v. *State,* 60 Wis. 583; *Scanlon* v. *Walshe,* 81 Md. 118; WIGMORE, EVIDENCE, §§ 2063-2064. In Indiana the contrary doctrine is held, *Cuppy* v. *State,* 24 Ind. 389; *Evans* v. *State,* 165 Ind. 369, 2 L. R. A. (N. S.) 619, as it is also in *State* v. *McDowell,* 101 N. C. 734, overruling, *Boykin* v. *Boykin,* 70 N. C. 262; *State* v. *Pettaway,* 3 Hawks. 623.

WITNESSES—PHYSICIAN AND PATIENT—TESTIMONY AS TO THE RESULT OF AN AUTOPSY TAKEN WITHOUT CONSENT OF DECEASED PATIENT'S LEGAL REPRESENTATIVE.—Plaintiff sues as administrator of the estate of his deceased wife to recover for her death, resulting from injuries due to a defective highway. Upon the trial, over the objection of the plaintiff, a physician, who attended deceased before and up to the time of her death, was permitted to testify as to an autopsy upon deceased's body, which was made without plaintiff's knowledge and in disregard of his express refusal. *Held,* the testimony of the